

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

JAMES McCUSKER,

Plaintiff,

vs.

CIVIL ACTION NO.

2:15-CV-2659

HIBU PLC, HIBU INC., MIKE POCOCK,

TONY BATES, BOB WIGLEY,

ELIZABETH G. CHAMBERS, JOHN

COGHLAN, TOBY COPPEL, CARLOS

ESPINOSA de los MONTEROS,

KATHLEEN FLAHERTY, RICHARD

HOOPER and BOB GREGERSON,

Defendants.

JOINT PRETRIAL ORDER

Pursuant to the Court's Scheduling Order, the parties submit the following Pretrial Order:

I. FULL CAPTION OF THE ACTION

The full caption of the action is as set forth above.

II. IDENTIFICATION OF COUNSEL

Plaintiff is represented by Clifford E. Haines and Danielle M. Weiss of Haines and Associates, located at The Widener Building, 5th Floor, 1339 Chestnut Street, Philadelphia, PA 19107, phone: 215-246-2200, fax: 215-246-2211 and James M. Lemonedes of Fox Rothschild LLP, located at 100 Park Avenue, Suite 1700, New York, NY 10178, phone: 212-878-7900, fax: 212-692-0940.

Defendants are presented by Bret A. Cohen, Breton Leone-Quick, Gauri P. Punjabi, Terry McMahon and Robert O. Sheridan of Mintz Levin Cohn Ferris Glovsky and Popeo PC, located at One Financial Center, Boston, MA 02111, phone: 617-542-6000, fax: 617-542-2241.

III. TRIAL TIME

The trial by jury is expected to last 6-8 trial days.

IV. WITNESSES TO BE CALLED AT TRIAL

A. FACT WITNESSES FOR PLAINTIFF

1. James McCusker (in person)
2. Mark Cairns (in person)
3. Malcolm Green (in person)
4. Christian Wells (in person)
5. Michael Pocock (by deposition)
6. Joseph Walsh (by deposition)
7. Christopher Wilmot (by deposition)
8. Robert Wigley (by deposition)
9. Bryan Turner (by deposition)
10. Anthony Bates (by deposition)
11. Gary Shaw (in person)
12. Richard Hooper (by deposition)
13. Christopher Wilson (in person)
14. John Butler (in person)
15. Russ Michels (in person)
16. Lisa Mueller (in person)

B. FACT WITNESSES FOR DEFENDANT

1. Malcolm Green (in person)
2. Christian Wells (in person)
3. Bryan Turner (in person)
4. Richard Lumby (in person)
5. Robert Gregerson (in person)
6. Angie Corcoran (in person)

7. Mark Payne (in person)
8. Edward Broderick (in person)
9. Mark Cairns (in person)
10. Forensics consultant from Navigant Consulting, to be identified (in person)
11. Michael Pocock (in person if available; by video or deposition if health does not permit in person testimony)
12. Joseph Walsh (by deposition)
13. Richard Hooper (by deposition)
14. Robert Wigley (by deposition)
15. Anthony Bates (by deposition)
16. Christopher Wilmot (by deposition)

C. EXPERT WITNESSES FOR DEFENDANT

1. Handwriting expert, to be identified (in person)

V. DEPOSITION DESIGNATIONS

A. TESTIMONY DESIGNATED BY THE PARTIES

Deposition Designations of Chris Wilmot

Plaintiff's Designations	Defendants' Objections	Defendants' Counter Designations	Defendants' Designations	Plaintiff's Objections	Plaintiff's Counter Designations
4:5-5:11			4:12-7:3		4:5-7:8
6:15-21			8:10-9:9		
7:4-8			9:21-10:9		9:21-10:17
8:10-11; 23			11:5-11:12		11:5-12:20
9:24-10:17			12:21-16:4		12:21-16:23
11:24-12:20			17:8-19:1		
13:19-14:2			23:2-23:10		23:2-26:8
15:16-16:22		15:16-16:23	25:1-26:4		
17:8-19:1			26:22-27:1		
19:21-20:22		19:21-21:15	29:15-30:13		
21:16-22:23		21:16-23:1			
23:2-26:8	Object to 23:11-24:17				
28:1-6; 11-15		28:7-10			
28:25-29:14					28:25-20:13

Deposition Designations of Bryan Turner^{1/}

Plaintiff's Designations	Defendants' Objections	Defendants' Counter Designations	Defendants' Designations	Plaintiff's Objections	Plaintiff's Counter Designations
7:10-34:14	<i>See Footnote 1</i>				
36:24-37:22					
38:20-42:5					
43:1-6					
50:19-20					
52:8-53:1					
54:25-56:1					
58:21-59:8					
60:15-62:10					
65:8-65:15					
74:3-8					
78:18-79:50					
83:1-19					
86:16-87:23					
88:16-89:14					

Deposition Designations of Tony Bates

Plaintiff's Designations	Defendants' Objections	Defendants' Counter Designations	Defendants' Designations	Plaintiff's Objections	Plaintiff's Counter Designations
8:9-18			7:25-10:1		
10:8-11		10:7-10:11	11:19-12:15		
10:20-14:7		10:19-14:7	15:19-16:12		
15:19-16:12			19:10-20:21		
20:15-20			21:5-21:22		21:23-22:19
22:15-22:19			22:20-23:6		22:20-23:9
29:7-30:15			23:18-24:5		23:18-25:4
36:2-37:6			25:5-26:21		25:5-26:25
37:7-38:3			27:9-27:24		27:9-28:8
40:7-45:4	Object to 40:7-15		28:15-29:4		28:15-30:15
46:4-46:22			31:5-36:2		31:5-36:9
48:11-48:22			37:22-39:12		37:7-39:12
50:11-23			41:8-58:12		40:7-60:7
51:3-52:7			60:8-61:17		60:8-62:2
54:10-56:2			63:8-63:24		62:12-66:4
58:1-50:7			64:14-66:4		
62:11-64:25		62:10-64:25	67:8-67:16		67:8-67:17
			68:1-69:24		
			73:15-74:11		73:11-74:11

^{1/} Defendants object to the deposition designations of Bryan Turner in their entirety.

Deposition Designations of Richard Hooper

Plaintiff's Designations	Defendants' Objections	Defendants' Counter Designations	Defendants' Designations	Plaintiff's Objections	Plaintiff's Counter Designations
8:9-10:20			6:2-6:7		
11:19-13:14			7:11-8:21		
14:6-15:18			9:3-16:17		
16:9-28:30	Object to 25:15-26:24		17:2-20:13		
31:23-32:25			21:7-21:17		
39:5-16			21:19-25:14		
41:6-42:15	Object to 41:7-15		26:25-27:12		
			28:3-31:2		28:3-31:9
			31:10-31:21		
			36:3-36:20		35:3-37:4
			37:7-38:10		
			38:16-38:23		
			39:5-39:20		
			41:11-42:15		41:6-42:15

Deposition Designations of Michael Pocock (3/11/16 transcript)

Plaintiff's Designations	Defendants' Objections	Defendants' Counter Designations	Defendants' Designations	Plaintiff's Objections	Plaintiff's Counter Designations
5:10-12			4:16-4:24		
14:8-15:23			5:13-16:13		5:10-16:22
16:6-22			17:25-19:13		17:25-19:14
19:15-21:17	Object to 19:15-20		19:21-20:16		
28:29-29:8			20:24-23:18		
36:20-25			25:7-27:23		
40:13-15			28:14-42:9		28:14-42:8
47:2-9			43:1-47:9		
51:3-16			47:14-47:24	Object	
56:19-57:12	Object to 57:7-12		48:16-51:1	Object	
58:3-61:7			52:4-53:4	Object	
61:12-63:16			54:11-55:5		
66:17-67:24			56:19-57:2		56:19-61:7
69:20-70:3			57:16-61:7		
73:9-81:20			61:12-73:22		61:12-89:18
86:16-90:8	Object to 89:19-25 and 90:1-8		74:7-89:18		
99:21-115:8	Object to		90:22-91:9		90:1-91:9

	100:15-101:4 and 103:25- 113:9				
115:12-20			95:24-100:10		95:24-116:2
			101:5-103:24		
			113:10-113:14		
			115:12-116:2		

Deposition Designations of Michael Pocock (8/4/16 transcript)

Plaintiff's Designations	Defendants' Objections	Defendants' Counter Designations	Defendants' Designations	Plaintiff's Objections	Plaintiff's Counter Designations
			5:8-6:3		
			6:15-20:21		
			21:13-24:25		21:5-25:25
			25:13-25:25		
			26:11-26:21		
			31:6-31:22		31:6-31:25
			34:5-34:14		34:5-36:6
			37:20-46:24		37:3-52:21
			48:14-52:21		
			56:20-57:17		56:20-57:23
			58:1-61:18		58:1-61:24
			62:13-64:1		
			65:14-66:7		65:3-66:7
			68:10-68:14		67:11-68:14
			71:8-71:19		71:8-72:2
			73:1-75:7		73:1-75:8

Deposition Designations of Mark Cairns^{2/}

Plaintiff's Designations	Defendants' Objections	Defendants' Counter Designations	Defendants' Designations	Plaintiff's Objections	Plaintiff's Counter Designations
			12:7-12:12		
			21:5-22:15	Object	
			23:8-24:4	Object to 23:8- 23:24	
			26:3-26:22	Object	
			27:8-28:1	Object	
			69:6-76:2	Object	
			73:18-77:2	Object	
			86:15-86:24		
			89:24-90:4		

^{2/} Notwithstanding the objections listed herein, Plaintiff objects to the deposition designations of Mark Cairns in their entirety.

			92:5-92:16		
			94:16-95:21		
			114:5-114:12	Object	
			115:2-115:10	Object	
			122:4-122:6		
			123:1-124:24	Object to 123:1-123:6; 124:2-24	123:7-124:1
			136:19-136:24		136:19-137:7
			138:20-140:4		
			141:1-141:25		141:1-142:24
			142:1-142:16		142:1-143:6
			182:11-184:7		
			185:5-188:15	Object to 188:9-15	
			196:12-197:15		196:12-197:14
			206:22-207:7		206:22-207:8
			240:15-240:24	Object	
			241:14-241:19		
			256:6-269:22		256:6-274:11
			275:1-275:4		275:1-275:13
			297:1-298:24		297:1-300:6

Deposition Designations of Bob Wigley

Plaintiff's Designations	Defendants' Objections	Defendants' Counter Designations	Defendants' Designations	Plaintiff's Objections	Plaintiff's Counter Designations
			5:23-7:24		
			13:10-14:9		
			16:15-26:5		15:13-26:5
			26:17-29:15		
			31:2-32:17		31:2-33:2
			33:4-33:15		
			36:8-40:17		
			41:4-46:15		
			48:4-48:25		
			49:13-49:17		
			51:7-52:5		51:7-53:7
			54:2-54:22		
			56:3-57:25		
			58:20-66:9		
			74:25-76:10		67:14-74:25
			77:9-79:9		
			80:14-83:21		
			84:5-84:23		
			85:21-88:14		
			90:2-96:7		
			106:4-108:6		

VI. SCHEDULE OF EXHIBITS

A. EXHIBITS FOR PLAINTIFF WITH DEFENDANTS' OBJECTIONS

- P1 Email dated March 6, 2013 from Corporate Communications Group to Corporate Communications Group, signed by Mike Pocock
- P2 Letter terminating McCusker's Employment, dated March 6, 2013
- P3 Yell Group plc Annual Report for the year ended 31 March 2012
- P4 Deposition of Christian Wells with Exhibits **[Defendants Object]**
- P5 Deposition of Malcolm Green with Exhibits **[Defendants Object]**
- P6 Deposition of Mike Pocock with Exhibits **[Defendants Object]**
- P7 Deposition of Chris Wilmot **[Defendants Object]**
- P8 Deposition of Tony Bates **[Defendants Object]**
- P9 Deposition of Richard Hooper with Exhibits **[Defendants Object]**
- P10 Deposition of Bryan Turner **[Defendants Object]**
- P11 Project Green Draft Note of Interview with Patti Seda, hibu0000294-0000296
- P12 Project Green Draft Note of Interview with John Gregory hibu0000282-hibu0000287
- P13 Project Green Draft Note of follow-up Interview with John Gregory hibu0000288-hibu0000293
- P14 Project Green Draft Note of Interview with John Wholey hibu0000306-hibu0000308
- P15 Project Green Draft Note of Interview with John Butler hibu0000273-hibu0000281
- P16 Email from Richard Hooper to Mike Pocock cc to Christian Wells, dated 2/12/13, hibu0000256
- P17 Email from Bob Wigley to Mike Pocock, Christian Wells, Tony Bates, Simon Freakley, cc to Richard Hooper, dated 2/15/13 hibu0000297
- P18 McCusker's Personnel File as Produced by hibu in discovery

- P19 hibu document: Our Code of Ethics, hibu0000405-hibu0000427
- P20 Summary Note of Interviews, hibu0000315-hibu0000317
- P21 McCusker's tax records from 2009-2015
- P22 McCusker's Handwritten notes of people who contacted him post-termination and/or refused to speak to return his calls McCusker001581-McCusker001582 **[Defendants Object]**
- P23 Notes from McCusker's former colleagues sent post-termination McCusker001551-McCusker001579 **[Defendants Object]**
- P24 McCusker's handwritten notes McCusker001543-McCusker001550 **[Defendants Object]**
- P25 McCusker's "Black and Reds" McCusker000686-McCusker001542
- P26 Post-hibu offer letters McCusker001586-McCusker001591
- P27 McCusker's hibu employment agreement
- P28 Mike Pocock's employment agreement **[Defendants Object]**
- P29 Written reports and/or presentations and/or slides prepared by Booz Allen Hamilton between January 2011 and March 2013 for hibu related to Pocock's initiatives for restoring hibu's financial condition **[Defendants Object]**
- P30 Written reports and/or presentations and/or slides prepared by Deloitte between January 2011 and March 2013 for CoCom and presented to any executive of hibu and/or any board member of hibu related to Pocock's initiatives for restoring hibu's financial condition **[Defendants Object]**
- P31 Proposals, appraisals or any other written materials prepared by Houlihan Lokey at the request of CoCom or the board of hibu related to the potential sale of hibu Inc and/or hibu PLC between January 2011 and March 2013 **[Defendants Object]**
- P32 hibu PLC board minutes from January 1, 2011 through March 31, 2013 **[Defendants Object]**
- P33 hibu Inc board minutes from January 1, 2011 through March 31, 2013 **[Defendants Object]**
- P34 Letter from Joe Walsh to Chris Wilson of Houlihan Lokey Walsh 000001-000002
- P35 Any document used as an exhibit in the deposition of Joe Walsh
- P36 Defendants' Answers to Interrogatories

- P37 Defendants Answers to Requests for Admission
- P38 Any document produced by the Defendants in discovery **[Defendants Object]**
- P39 All Pleadings and Motions in this matter **[Defendants Object]**
- P40 Any document identified in the Defendants' Portion of the Pretrial Memorandum

B. EXHIBITS FOR DEFENDANTS WITH PLAINTIFF'S OBJECTIONS

- D1 February 3, 2012 E-mail from Joe Walsh re: The consolidation wave is about to kick off (Hibu_JM_000007)
- D2 March 8, 2012 E-mail from Joe Walsh re: AT&T and Cerberus Capitol (Hibu_JM_000047)
- D3 January 2, 2013 E-mail from Joe Walsh re: Platinum Equity (Hibu_JM_000048).
- D4 February 28, 2013 Voicemail from Joe Walsh to Mark Cairns (Hibu_JM_000158)
- D5 February 28, 2013 E-mail from Joe Walsh to Mark Cairns re: golf (hibu0000223)
- D6 January 18, 2013 Voicemail from Joe Walsh to Jim McCusker (Hibu_JM_000003)
- D7 February 7, 2013 Voicemail from Joe Walsh to Jim McCusker (Hibu_JM_000002)
- D8 February 28, 2013 Voicemail from Joe Walsh to Jim McCusker (Hibu_JM_000006)
- D9 James McCusker March 6, 2013 Termination Letter (Hibu_JM_000057)
- D10 Mark Cairns' CoCom Contact List (Cairns Deposition Exhibit 3) **[Plaintiff Objects]**
- D11 November 1, 2012 E-mail from Joe Walsh re: Supermedia (Hibu_JM_000052)
- D12 March 6, 2013 E-mail from Mike Pocock to Corporate Communications Group (Hibu_JM_000001)

- D13 August 21, 2012 E-mail from Jim McCusker to Mark Cairns (Hibu_JM_000011-12)
- D14 August 21, 2012 E-mail from Mark Cairns to Jim McCusker (Hibu_JM_000013-14)
- D15 December 4, 2012 E-mail from Mark Cairns to Jim McCusker (Hibu_JM_000034-35)
- D16 February 2012-February 20, 2013 Call Log (Hibu_JM_000004) [**Plaintiff Objects**]
- D17 February 28, 2013 Call Log (Hibu_JM_000166) [**Plaintiff Objects**]
- D18 Jim McCusker iPhone Data Report (Hibu_JM_000005) and/or screenshots of actual text messages [**Plaintiff Objects**]
- D19 hibu Code of Ethics (Hibu_JM_000168-190)
- D20 January 28, 2013 E-mail from Joe Walsh to Rick Lumby re: we should talk (Hibu_JM_000162-163)
- D21 December 19, 2012 E-mail from John Gregory to Joe Walsh re: Great News Today (Hibu_JM_000161)
- D22 January 27, 2013 E-mail from Joe Walsh to Rick Lumby re: contact list everyone has been asking for (attaching CoCom contact information) (Hibu_JM_159-160)
- D23 August 2, 2012 E-mail from Joe Walsh re: 8/9-8/10 (Hibu_JM_000036-37)
- D24 February 12, 2013 E-mail from Richard Hooper to Mike Pocock (Hibu_JM_000053)
- D25 Notes of Gary Shaw interview (Hibu_JM_000088-101)
- D26 Notes of John Butler interview (Hibu_JM_000102-110)

- D27 Notes of John Gregory interview (Hibu_JM_000111-116)
- D28 Notes of John Gregory interview (Hibu_JM_000117-122)
- D29 Notes of Patti Seda interview (Hibu_JM_000123-125)
- D30 Notes of Bryan Turner interview (Hibu_JM_000127-134)
- D31 Notes of John Wholey interview (Hibu_JM_000135-137)
- D32 November 2, 2012 E-mail from Bob Wigley to Mike Pocock and Tony Bates
(Hibu_JM_000143) **[Plaintiff Objects]**
- D33 Notes of Jim McCusker and Mark Cairns interviews (Hibu_JM_000144-146)
- D34 Budget Meeting Schedules (Hibu_JM_000138-142)
- D35 April 15, 2012 Offer Letter from Yellowbook Inc. to James McCusker
(Hibu_JM_000147-154)
- D36 October 24, 2012 Offer Letter to purchase Yellowbook Inc. from Joe Walsh to
Houlihan Lokey (McCusker000069-70)
- D37 McCusker Notes from Black and Red Notebooks (McCusker000686-001542)
- D38 McCusker Dex Media Offer Letter (McCusker001590-91)
- D39 McCusker W-2 Earnings Summary (McCusker001583-85)
- D40 McCusker Tax Returns 2009-2015 (McCusker001592-McCusker001609)
- D41 McCusker Resume
- D42 McCusker Employment Offer from Argo Tea (McCusker001586)
- D43 McCusker Employment Offer from eLocal (McCusker001587-88)
- D44 October 8, 2012 E-mail from Joe Walsh to James McCusker (Hibu_JM_000020)
- D45 October 8, 2012 E-mail from Gary Shaw to James McCusker (Hibu_JM_000021)
- D46 October 2, 2012 E-mail from James McCusker to Gary Shaw (Hibu_JM_000019)

- D47 An Open Letter to members of the CoCom of Hibu Lenders (McCusker000049-53)
- D48 February 15, 2013 E-mail from Bob Wigley to Mike Pocock, Christian Wells, Tony Bates, and Simon Freakley (Hibu_JM_000126)
- D49 April 15, 2012 E-mail from Joe Walsh re: Dilbert Cartoon (Hibu_JM_000156-57)
- D50 August 21, 2012 E-mail from Jim McCusker to Joe Walsh re: Dex/SM merger (Hibu_JM_000022-33)
- D51 January 27, 2012 E-mail from Joe Walsh to Jim McCusker re: Culture eats strategy for lunch (Hibu_JM_000040)
- D52 July 29, 2013 E-mail from Jim McCusker to Joe Walsh re: Fun (Hibu_JM_000038-39)
- D53 January 27, 2012 E-mail from Joe Walsh to Jim McCusker re: S&P raising Yell to a B- (Hibu_JM_000041)
- D54 January 27, 2012 E-mail from Joe Walsh re: AT&T may sell? (Hibu_JM_000042)
- D55 February 13, 2013 E-mail from Joe Walsh to Jim McCusker (Hibu_JM_000043-46)
- D56 November 14, 2011 E-mail from Joe Walsh re: Why are big companies so mediocre? (Hibu_JM_000049)
- D57 February 3, 2012 E-mail from Joe Walsh re: YP Print Reality (Hibu_JM_000050-51)
- D58 McCusker Calendar Appointments
- D59 March 4, 2012 Letter to Joe Walsh re: Project Chevis
- D60 January 6, 2011 Letter re: Platinum Equity Bid

- D61 January 6, 2011 Letter re: New Mountain Capital Bid
- D62 October 2012 Press Reports regarding hibu Debt Payment
- D63 April 25, 2012 e-mail from Tony Bates to McCusker re: Fiscal 13 Budget
- D64 January 8, 2013 e-mail from McCusker to Christian Wells re: Protecting Our Data
- D65 Christian Wells December 2012 Note re: Conversation with Joe Walsh [**Plaintiff
Objects**]
- D66 hibu Organization Chart of Employees Reporting to McCusker
- D67 January 23, 2013 e-mail from McCusker to Mark Cairns re: Streamlining Our
Global Organisational Structure
- D68 Joe Walsh Handwritten Notes (Walsh000003-85)
- D69 Joe Walsh Phone Records (Walsh000086-293)
- D70 Joe Walsh Handwritten Calendar Notes (Walsh000294-373)
- D71 McCusker Dex Media Employment Documents (Walsh000393-411)
- D72 Affidavit of Joe Walsh (Walsh000412-414)
- D73 May 21, 2015 E-mail re: McCusker Offer (Walsh000415-416)
- D74 May 14, 2015 E-mail re: Jim McCusker offer letter – VP – Expansion Channel
(Walsh000417-419)
- D75 May 15, 2015 E-mail re: Jim McCusker offer letter – VP – Expansion Channel
(Walsh000420-422)
- D76 May 16, 2015 E-mail re: Jim McCusker offer letter – VP – Expansion Channel
(Walsh000423-424)
- D77 May 22, 2015 E-mail re: Let me know if you have some time (Walsh000425-426)

D78 Transcript of Deposition of Joe Walsh, and accompanying exhibits **[Plaintiff
Objects]**

D79 hibu PLC and hibu Inc. v. Joe Walsh Complaint

D80 McCusker v. hibu PLC et al. Complaint

D81 McCusker Responses to Defendants' Requests for Admissions

D82 McCusker Answers to Defendants' Interrogatories

D83 Any document identified in Plaintiff's portion of the pretrial memorandum

The parties reserve the right to amend this list up to the time of trial with proper notice to all counsel and the Court.

Respectfully submitted:

HAINES & ASSOCIATES

MINTZ LEVIN COHN FERRIS
GLOVSKY AND POPEO, PC

/s/ Clifford E. Haines
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Attorneys for Plaintiff

*Attorneys for Defendants hibu PLC,
hibu, Inc. and Michael Pocock*

Dated: September 21, 2016

CERTIFICATE OF SERVICE

I, Bret A. Cohen, Esquire, hereby certify that a true and correct copy of the foregoing Joint Pretrial Memorandum was served on counsel for Plaintiff through the Court's ECF System on September 21, 2016.

/s/ Bret A. Cohen